

UNITED STATES COURT OF APPEALS March 15, 2011

FOR THE TENTH CIRCUIT Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FRANCISCO ACOSTA-VELARDE,

Defendant - Appellant.

No. 11-2009
(D.C. No. 1:09-CR-02254-JEC-1)

ORDER

Before **KELLY, HARTZ**, and **GORSUCH**, Circuit Judges.

The government has moved to dismiss this appeal as untimely. The appellant's retained counsel, attorney Fred Martinez, has filed a motion to withdraw.

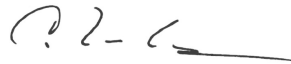
Mr. Acosta-Velarde seeks to appeal from the judgment entered in his criminal case on August 4, 2010. His notice of appeal was due within 14 days of the entry of the district court's judgment - on or before August 18, 2010. *See* Fed. R. App. P. 4 (b)(1)(A). It was not filed until January 6, 2011 - outside the 14-day period prescribed by Fed. R. App. P. 4 (b)(1)(A) and also outside the 30-day extension period allowed by Fed. R. App. P. 4 (b)(4).

Mr. Acosta-Velarde's notice of appeal was untimely. The timeliness requirements of Fed. R. App. P. 4 (b) are inflexible claim processing rules. *See United States v. Garduño*, 506 F. 3d 1287, 1291 (10th Cir. 2007). Accordingly, the government's motion to dismiss is granted.

Mr. Acosta-Velarde's attorney has filed a motion to withdraw, asking that new counsel be appointed for this appeal. The motion to withdraw is granted. In view of the dismissal of this appeal, the request for appointment of new counsel is denied as moot.

APPEAL DISMISSED.

Entered for the Court
ELISABETH SHUMAKER, Clerk of Court,



by:

Christine Van Coney
Counsel to the Clerk